

ANNUAL REPORT
OF THE
CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE



Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204

October, 2011

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2011

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INDIANA CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE

Membership Roster

Senators

Brent Steele, Chairperson
Bedford

Susan Glick
LaGrange

Karen Tallian
Portage

Greg Taylor
Indianapolis

Representatives

Phyllis Pond
New Haven

Randy Frye
Indianapolis

Vanessa Summers
Indianapolis

John Day
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Laymembers

Bruce Pennamped
Indianapolis

Magistrate Kimberly D. Mattingly
Indianapolis

Peter Nugent
Indianapolis

Kathryn Hillebrands Burroughs
Carmel

Staff

Eliza Houston Stephenson
Attorney for the Committee

Bill Brumbach
Fiscal Analyst for the Committee

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

I. STATUTORY DIRECTIVE

The Indiana General Assembly enacted legislation directing the Committee to review custody and educational expenses and other items related to the welfare of a child of a family that is no longer intact. Specifically, the Committee is to consider the following in studying the child support guidelines:

- (1) The mathematics pertaining to the child support guideline chart.
- (2) The actual costs of supporting a child.
- (3) Whether it is appropriate to calculate child support guideline amounts based primarily upon the ability of the parent to pay rather than the financial needs of the child.
- (4) Equality of child support awards for the children of the parties, regardless of birth order.
- (5) A mechanism that may be employed to modify the amount of support to be paid due to a change in financial circumstances or a change in the number of children being supported by either parent.
- (6) The age of a child to the extent that the child may require different amounts of support at different ages.
- (7) Clarification regarding under what circumstances, if any, support may be abated.
- (8) A mechanism that may be employed to ensure that the guidelines are applied flexibly.
- (9) The application of the guidelines to a split custody situation.
- (10) Whether it is appropriate to base child support guidelines upon the premise that the child should enjoy the same standard of living that the child would have enjoyed if the family remained intact.

II. SUMMARY OF WORK PROGRAM

The Committee met one time during the 2011 interim, on October 26. The meeting was held at the State House in Indianapolis.

III. SUMMARY OF TESTIMONY

For a more detailed account, minutes from the Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>

The first reference to a witness includes the name of the witness and the person or organization the witness represents. For brevity, any subsequent reference includes only the name of the witness. A witness list is included at the end of the report.

Consideration of Legislation

Preliminary Draft (PD) 3067

The Committee members discussed PD 3067, which addresses joint legal custody as follows:

Establishes a rebuttable presumption that an award of joint legal custody is in the best interest of a child. Requires a court, if a party seeks to rebut the presumption, to consider: (1) the fitness and suitability of each of the persons awarded joint legal custody; (2) the ability of the parents to communicate and advance the child's welfare; and (3) whether the child has established a close and beneficial relationship with both of the persons awarded joint legal custody. Repeals certain provisions governing the award of joint legal custody that are being superseded by this bill.

Representative Phyllis Pond, a Committee member, explained the content of PD 3067 and provided the Committee members with additional information regarding child custody.

Mr. Bruce Pennamped, a Committee member, indicated that he supports PD 3067 as the parties would start out on the same footing. Senator Susan Glick and Magistrate Kimberly Mattingly, both Committee members, discussed concerns with establishing a presumption for joint legal custody.

Senator Greg Taylor, a Committee member, discussed that he believes joint legal custody is established at the time a child is born and that it is best for a parent to have to prove there should not be joint legal custody.

The Committee members discussed that PD 3067 applies only to joint legal custody and does not establish a presumption for joint physical custody.

Preliminary Draft (PD) 3237 and Preliminary Draft (PD) 3266

The Committee members discussed PD 3237, which amends the duty to support provisions as follows:

Provides that the duty to support a child, which does not include support for educational needs, ceases when the child becomes 19 years of age. (Current law provides that the duty to support a child ceases when the child becomes 21 years of age.)

The Committee members also discussed PD 3266, which amends the duty to support provisions as follows:

Provides that the duty to support a child, which does not include educational needs, ceases when the child becomes 19 years of age. (Current law provides that the duty to support a child ceases when the child becomes 21 years of age.) Provides that the duty to support a child ceases when the child becomes 21 years of age if the child is enrolled in a secondary school or postsecondary educational institution. Allows the court to order a parent to pay child support for a child until the child becomes 21 years of age if: (1) the parties agree in writing to the payment of child support; or (2) the parent requesting the payment of child support petitions the court before the child becomes 19 years of age and shows that the child is not capable of supporting himself or herself through employment or is unable to find gainful employment. Provides that the duty to support a child ceases if the child marries. Provides that, if the court finds that a child is partially supporting himself or herself or is capable of partially supporting himself or herself, the court may order the parent to pay child support until the child becomes 21 years of age but allows the court to modify the amount of child support.

Senator Steele explained the content of PD 3237 and PD 3266.

Ms. Suzanne O'Malley with the Indiana Prosecuting Attorneys Council (IPAC) discussed the difference between PD 3237 and PD 3266. She also stated that most parents believe that child support ends at the time the child turns 18 years of age and that as a result, there is a huge amount of child support owed that is not being collected for children ages 18 to 21 years. Ms. O'Malley said that IPAC supports PD 3266 which lowers the emancipation age while still allowing a custodial parent to pursue child support until the child becomes 21 years old if the child needs the support and if certain factors are met.

Ms. Karla Mantia with the IPAC explained how accruing arrearage on cases where a parent has stopped paying child support at the time the child becomes 18 years of age affects federal funding.

Ms. Kathy Dvorak, a prosecuting attorney with St. Joseph County Prosecutor's Office, confirmed that many parents believe child support stops at the time the child becomes 18 years of age and stated that in St. Joseph County only seven percent of the child support owed is collected for children who are between 18 and 21 years of age.

Ms. Octavia Snulligan, an attorney and recent appointee to the parole board, stated that most of her clients believe that child support ceases when the child becomes 18 years old and explained why she supports changing the duty to support law to 19 years of age.

Mr. Peter Nugent, a Committee member, noted that a bill similar to the language in PD 3237 passed last year out of a committee in the House.

Other Business

Mr. Stuart Showalter with the Indiana Custodial Rights Advocates discussed two court of appeals cases involving paternity matters. He requested the legislature to address issues regarding surrogacy and contracts surrounding sperm donors.

IV. COMMITTEE RECOMMENDATIONS

The Committee did not make any findings of fact.

The Committee approved PD 3067 in a roll call vote of 6 to 3.

The Committee approved PD 3237 in a roll call vote of 8 to 0.

WITNESS LIST

Ms. Suzanne O'Malley, Indiana Prosecuting Attorneys Council

Ms. Karla Mantia, Indiana Prosecuting Attorneys Council

Ms. Kathy Dvorak, St. Joseph County Prosecutor's Office

Ms. Octavia Snulligan

Mr. Stuart Showalter, Indiana Custodial Rights Advocates